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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/967,091 | 09/28/2001 | Yu Zheng | PAT-1384 | 6648 |

7590 04/07/2003

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| EXAMINER |
|---|
| FRANCIS, FAYE |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3712 | |

DATE MAILED: 04/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/967,091 | ZHENG, YU | |
| | Examiner | Art Unit | |
| | Faye Francis | 3712 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *16 January 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) *8 and 9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 September 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

group I, the species shown In Figs 1-16;

group II, the species shown In Figs 17-18;

group III, the species shown In Fig 19;

group IV, the species shown In Fig 20.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 appears generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Raymond Sun on Monday March 17, 2003 a provisional election was made without traverse to prosecute the invention of I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

An action on the merits of the claims drawn to the elected invention follows.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 3-4, 7 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gilbert.

Gilbert discloses in Figs 1-4, an inflatable toy apparatus 10, comprising: an inflatable elongated body [balloon 18] having a front end and a rear end, a nose piece [plastic space capsule 52] provided at the front end of the elongated body, the nose

piece made from a material that is different from that of the elongated body as recited in claim 1 and a plurality of curved tails [Fig 1] provided at the rear end of the elongated body as recited in claim 4. Additionally, Gilbert discloses the tails are made from a material that is the same as that of the elongated body as recited in claim 3 and a gripping piece [area in the middle of the inflatable elongated body [balloon 18]] as recited in claim 8.

Should Gilbert be later deemed not to meet claims 1, 3-4, 7 and 8 because Gilbert does not disclose the nose piece made from a material that is different from that of the elongated body and the tails are made from a material that is the same as that of the elongated body, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the nose piece in the device of Gilbert from a material that is different from that of the elongated body for providing added protection to the nose section of the inflatable toy. Additionally, it would have been obvious to make the tails in the device of Gilbert from a material that is the same as that of the elongated body in order to reduce the manufacturing cost.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert.

Gilbert discloses most of the element of this claim as stated in paragraph 3 but does not disclose that the tails are made from a material that is different from that of the elongated body. It would have been obvious to make the tails in the device of Gilbert from a material that is different from that of the elongated body for providing added protection to the tail section of the inflatable toy. Note also cited references Benson.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert and further in view of Pippin Jr, hereinafter Jr.

Gilbert discloses most of the element of this claim as stated in paragraph 3 but does not disclose a plurality of winglets provided on the nosepiece.

Jr recognizes a toy missile/rocket including a plurality of winglets [stabilizing fins 39] provided on the nosepiece. It would have been obvious, in view of Jr provide the nosepiece of Gilbert device with a plurality of winglets for aerodynamic purposes and to make the device more realistic and more enjoyable for the children to play with.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert and further in view of Vanni.

Gilbert discloses most of the element of this claim as stated in paragraph 3 but does not disclose a tail piece provided to cover portions of the one of the tails, the tail piece being made from a material that is different from that of the one of the tails.

Vanni is cited to show a desirability to cover portion of the tail of a toy rocket with a tail piece [decal] being made from a material that is different from that of the one of the tails [col 2 lines 12-22]. It would have been obvious, in view of Vanni to provide the tail of Gilbert device with a decal in order to modify the appearance of the toy by a child to his/her particular preferences. Additionally, it would have been obvious to place the decal on the tail so that it covers portions of the one of the tails in order to see the decal from both sides.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert as applied to claims 1, 3-4, 7 and 8 above, and further in view of Johnson et al, hereinafter Johnson.

Gilbert discloses most of the element of this claim as stated in paragraph 3 but does not disclose a tail assembly having a hollow cylindrical tube.

Johnson teaches the concept of providing a flying toy with a removable tail construction/assembly having a hollow cylindrical tube [rear portion 12]. It would have been obvious, in view of Johnson to construct the tail of Gilbert device with a removable tail construction/assembly having a hollow cylindrical tube for ready access and removal and to make the device more realistic and more enjoyable for the children to play with.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 703-306-5941. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

FF
March 25, 2003